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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,530	01/16/2001	Mireille Maubru	05725.0828-00	2122
22852	7590	05/24/2004		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			EXAMINER WANG, SHENGJUN	
			ART UNIT 1617	PAPER NUMBER

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,530

Applicant(s)

MAUBRU ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12-18,20-34 and 37-44 is/are pending in the application.
- 4a) Of the above claim(s) 13,15,23-29 and 37-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12,14,16-18,20-22 and 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date March 12, 2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2004 has been entered.

Claim Rejections 35 U.S.C 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12, 14, 16-18, 20-22 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweger et al. (US 5,482,704, of record) and Babenko (US 6,277,893) in view of Saint-Leger (US 5,919,438, of record), and Murray (US 5,720,964, of record).

3. Sweger et al. teach the usefulness of the amphoteric starch herein employed in cosmetic composition. The starch derivatives may be used as thickener or emulsion stabilizer, they provide cosmetic composition with excellent aesthetic properties of skin feel and appearance. See, particularly, col. 1, line 20 to col. 2, line 33. The starch derivatives may be employed in various cosmetic compositions, including skin care creams and lotion, the cosmetic composition may comprise various conventional cosmetic ingredients. The amounts of the starch derivatives employed are depending on the type of cosmetic compositions, but generally in the range of

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0.1% to 20%. See, particularly, col. 4, line 39 to col. 6, line 40. The starch derivatives are superior to Carbopol (a conventional thickener and emulsion stabilizer) in respect of thickening and emulsion stabilizing properties. See, particularly, columns 8-9. Babenko teaches particularly a stable oil-in-water emulsion for use in cosmetic composition comprising the starch derivatives herein as emulsifier. The emulsion is particularly useful in compositions such as creams, lotions, antiperspirants, make-up products, sunscreens, shampoos and body cleansing products. See, particularly, the abstract, column 5, lines 20-40. Dimethicone, a polydimethylsiloxane is particularly useful in making the emulsion. See, particularly, col. 6, 10-32.

4. The primary references do not teach expressly a composition comprising each and every cosmetic ingredient herein listed, alkyl ether sulfate, the particular cationic polymer, polydimethylsiloxane, and coconut monoisopropanolamide, and without fatty acid soap.

5. However, Murray teaches a shampoo composition comprising alkyl ether sulfates, e.g., sodium lauryl ether sulfate, silicone emulsion, cationic polymers, such as polymer JR 400, and a thickener. See, particularly, the abstract, col. 3, line 36 to col. 6, line 45. Saint-Leger teaches that coconut monoisopropanolamide is particularly useful in shampoo composition, particularly with alkyl ether sulfate. See, particularly, the example 1, in col. 4. Further, none of the primary references require the present of fatty acid soap when amphoteric starch is used.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ the starch derivatives herein as emulsion stabilizer or thickener (as taught by Sweger et al. and Babenko) to make a cosmetic emulsion composition, and incorporate the conventional cosmetic ingredients herein disclosed to formulate a particular cosmetic composition, such as shampoo, and without using fatty acid soap.

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A person of ordinary skill in the art would have been motivated to employ the starch derivatives herein as emulsion stabilizer or thickener (as taught by Swagger et al. and Bambino) to make a cosmetic emulsion composition, and incorporate the conventional cosmetic ingredients herein disclosed to formulate a particular cosmetic composition, such as shampoo, and without using fatty acid soap because the starch derivatives have excellent aesthetic properties of skin feel and appearance, and are superior to conventional thickener or emulsion stabilizer. The employment of the particular ingredients herein, i.e., alkyl ether sulfate, the particular cationic polymer, polydimethylsiloxane, and coconut monoisopropanolamide, in a cosmetic composition, e.g., shampoo, is obvious to one of ordinary skill in the art because all these ingredients are old and well-known cosmetic ingredients, particularly in shampoo composition.

Response to the Arguments

Applicants' amendments and remarks submitted March 12, 2004 have been fully considered, but are not persuasive.

Applicants contend that the cited references do not teach all the limitations herein recited, particularly, the references do not teach a composition free of fatty acid soap.

The arguments are not persuasive. Nowhere in Sweger et al. teach the cosmetic composition therein has to comprising fatty acid soap. See the claims. Applicants may not interpreted a particular example as the full scope of the teaching. Question under 35 U.S.C. 103 is not merely what reference expressly teach, but what they would have suggested to one of ordinary skill in the art at the time the invention was made; all disclosures of prior art, including unpreferred embodiments, must considered. In re Lamberti and Konort (CCPA), 192 USPQ 278. In the instant situation, the primary references teach broadly the usefulness of the amphoteric

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starch herein in cosmetic compositions, which does not require the present of fatty soap. It would have been obvious to use the amphoteric starch in a cosmetic composition, wherein, no fatty soap is used. Applicants' assertion that the combination of the cited references would result in the destruction of the intended operation is groundless. Nowhere in the primary references require the present of fatty soap.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) And *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching, suggestion and motivation were found both in the references and in the knowledge generally available to one of ordinary skill in the art. Particularly, the primary references teach broadly the usefulness of the amphoteric starch herein in cosmetic compositions, the second references teaches the particular components herein employed are well-known cosmetic ingredients. Incorporating those ingredients with the amphoteric starch herein to form a cosmetic composition, such as shampoo, would have been obvious to one of ordinary skill I the art.

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

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time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant situation, the primary references teaches the usefulness of amphoteric starch in cosmetic composition, such as shampoo. The second references teach the other ingredients are well-known ingredients useful in cosmetic composition, such as shampoo. It would have been prima facie obvious to one of ordinary skill in the art to make a cosmetic composition, such as shampoo, comprising all the old and well-known ingredients herein and the amphoteric starch for its superior properties.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (571)272-0632. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

SHENGJUN WANG
PRIMARY EXAMINER



Shengjun Wang

May 20, 2004